

**HB 2623** - H AMD TO H AMD (H-5185.3) **1008**  
By Representative Chandler

1 On page 14, beginning on line 30, strike all of section 11 and  
2 insert the following:

3 "Sec. 11. RCW 19.30.170 and 1987 c 216 s 5 are each amended to  
4 read as follows:

5 (1) (~~After filing a notice of a claim with the director, in~~  
6 ~~addition to any other penalty provided by law,)~~ Any person wishing  
7 to attach the surety bond or security deposit of a farm labor  
8 contractor or bring suit against a farm labor contractor under this  
9 chapter must file a notice of claim with the director. Upon  
10 receipt of the notice, the director shall immediately notify the  
11 contractor and begin an investigation into the substance of the  
12 claim. Within ninety days of receipt of the notice, the director  
13 shall complete his or her investigation and issue a determination  
14 that a civil penalty is required under RCW 19.30.160 or that the  
15 farm labor contractor is in compliance with this chapter. Any  
16 party aggrieved by the director's determination may appeal as  
17 provided for in chapter 34.05 RCW, so long as the party appeals  
18 within thirty days of receipt of the determination.

19 (2) No later than ten business days after receipt of the  
20 director's determination, the party seeking to attach the surety  
21 bond or security deposit or filing the claim must notify the  
22 director as to whether the party intends to pursue a private right  
23 of action. If the party does notify the director as to his or  
24 her intent to pursue a private right of action within ten business  
25 days, the party may not bring suit as provided under subsections  
26 (3) or (5) of this section. If the party elects a private right of  
27 action, the director will vacate any fines and penalties and  
28 immediately cease any administrative action. Either party may use  
29 the director's determination in a private right of action.

1        (3) Any person who is aggrieved by a violation of this chapter  
2 or any rule adopted under this chapter and who filed a notice as  
3 required under subsection (1) of this section and notified the  
4 director as to his or her intent to pursue a private right of  
5 action as required under subsection (2) of this section may bring  
6 suit in any court of competent jurisdiction of the county in which  
7 the claim arose, or in which either the plaintiff or respondent  
8 resides, without regard to the amount in controversy (~~(and without~~  
9 ~~regard to exhaustion of any alternative administrative remedies~~  
10 ~~provided in this chapter)~~). No such action may be commenced later  
11 than three years after the date of the violation giving rise to the  
12 right of action. In any such action the court may award to the  
13 prevailing party (~~(, in addition to)~~) costs and disbursements (~~(,~~  
14 ~~reasonable attorney fees)~~) at trial and appeal.

15        (~~(+2)~~) (4) In any action under subsection (~~(+1)~~) (3) of this  
16 section, if the court finds that the respondent has violated this  
17 chapter or any rule adopted under this chapter, it may award  
18 damages up to and including an amount equal to the amount of actual  
19 damages (~~(, or statutory damages of five hundred dollars per~~  
20 ~~plaintiff per violation, whichever is greater,)~~) or other equitable  
21 relief.

22        (~~(+3)~~ ~~Without regard to other remedies provided in this~~  
23 ~~chapter,~~) (5) A person (~~(having)~~) who has a claim against the farm  
24 labor contractor for any violation of this chapter and who filed a  
25 notice as required under subsection (1) of this section and  
26 notified the director as to his or her intent to pursue a private  
27 right of action as required under subsection (2) of this section  
28 may bring suit against the farm labor contractor and the surety  
29 bond or security deposit filed by the contractor pursuant to RCW  
30 19.30.040, in any court of competent jurisdiction of the county in  
31 which the claim arose, or in which either the claimant or  
32 contractor resides.

33        (~~(+4)~~) (6) An action upon the bond or security deposit shall  
34 be commenced by serving and filing the summons and complaint within  
35 three years from the date of expiration or cancellation of the bond  
36 or expiration or cancellation of the license, whichever is sooner,  
37 or in the case of a security deposit, within three years of the  
38 date of expiration or revocation of the license.

1           (~~(+5+)~~) (7) A copy of the summons and complaint in any such  
2 action shall be served upon the director at the time of  
3 commencement of the action and the director shall maintain a  
4 record, available for public inspection, of all suits so commenced.  
5 Such service shall constitute service on the farm labor contractor  
6 and the surety for suit upon the bond and the director shall  
7 transmit the complaint or a copy thereof to the contractor at the  
8 address listed in his or her application and to the surety within  
9 forty-eight hours after it has been received.

10           (~~(+6+)~~) (8) The surety upon the bond may, upon notice to the  
11 director and the parties, tender to the clerk of the court having  
12 jurisdiction of the action an amount equal to the claims or the  
13 amount of the bond less the amount of judgments, if any, previously  
14 satisfied therefrom and to the extent of such tender the surety  
15 upon the bond shall be exonerated.

16           (~~(+7+)~~) (9) If the actions commenced and pending at any one  
17 time exceed the amount of the bond then unimpaired, the claims  
18 shall be satisfied from the bond in the following order:

- 19           (a) Wages, including employee benefits;  
20           (b) Other contractual damage owed to the employee;  
21           (c) Any costs (~~(and attorneys' fees)~~) the claimant may be  
22 entitled to recover by contract or statute.

23           (~~(+8+)~~) (10) If any final judgment impairs the bond so  
24 furnished so that there is not in effect a bond undertaking in the  
25 full amount prescribed by the director, the director shall suspend  
26 the license of the contractor until the bond liability in the  
27 required amount unimpaired by unsatisfied judgment claims has been  
28 furnished. If such bond becomes fully impaired, a new bond must be  
29 furnished.

30           (~~(+9+)~~) (11) A claimant against a security deposit shall be  
31 entitled to damages under subsection (~~(+2+)~~) (4) of this section.  
32 If the farm labor contractor has filed other security with the  
33 director in lieu of a surety bond, any person having an unsatisfied  
34 final judgment against the contractor for any violation of this  
35 chapter may execute upon the security deposit held by the director  
36 by serving a certified copy of the unsatisfied final judgment by  
37 registered or certified mail upon the director. Upon the receipt  
38 of service of such certified copy, the director shall pay or order  
39 paid from the deposit, through the registry of the court which

1 rendered judgment, towards the amount of the unsatisfied judgment.  
2 The priority of payment by the director shall be the order of  
3 receipt by the director, but the director shall have no liability  
4 for payment in excess of the amount of the deposit.

5 **Sec. 12.** RCW 19.30.180 and 1985 c 280 s 12 are each amended to  
6 read as follows:

7 (~~The director or any other~~) (1) Any person wishing to bring  
8 suit against a farm labor contractor under this section must file  
9 a complaint with the director. Upon receipt of the complaint, the  
10 director shall immediately notify the contractor and begin an  
11 investigation into the substance of the complaint. Within ninety  
12 days of receipt of the complaint, the director shall complete his  
13 or her investigation and issue a determination that the farm labor  
14 contractor is in violation of or in compliance with this chapter.  
15 Any party aggrieved by the director's determination may appeal as  
16 provided for in chapter 34.05 RCW, so long as the party appeals  
17 within thirty days of receipt of the determination.

18 (2) No later than ten business days after receipt of the  
19 director's determination, the party filing the complaint must  
20 notify the director as to whether the party intends to pursue a  
21 private right of action. If the party does notify the director as  
22 to his or her intent to pursue a private right of action within ten  
23 business days, the party may not bring suit as provided under  
24 subsection (3) of this section. If the party elects a private  
25 right of action, the director will immediately cease any  
26 administrative action. Either party may use the director's  
27 determination in a private right of action.

28 (3) Any person who filed a complaint as required under  
29 subsection (1) of this section and notified the director as to his  
30 or her intent to pursue a private right of action as required under  
31 subsection (2) of this section or the director may bring suit in  
32 any court of competent jurisdiction to enjoin any person from using  
33 the services of an unlicensed farm labor contractor or to enjoin  
34 any person acting as a farm labor contractor in violation of this  
35 chapter, or any rule adopted under this chapter, from committing  
36 future violations. The court may award to the prevailing party  
37 costs and disbursements (~~and a reasonable attorney fee~~))."

1           Renumber the remaining sections consecutively and correct  
2 internal references accordingly.

3           Correct the title.

**EFFECT:** Requires a person, before attaching a surety bond or security deposit or bringing suit against a farm labor contractor to file a notice of claim or a complaint with the director of the Department of Labor and Industries.

Requires the director: (1) upon receipt of the notice or complaint, to immediately notify the contractor and begin an investigation; and (2) within 90 days of receipt of the notice of complaint, to issue a determination that the contractor is in violation of or in compliance with the law.

Allows any aggrieved party to appeal the director's determination as provided in the Administrative Procedures Act, so long as the party appeals within 30 days of receipt of the determination.

Requires the complaining party, no later than ten business days after receipt of the director's determination, to notify the director as to whether the party intends to pursue a private action.

Specifies that, if the complaining party does not notify the director as to whether he or she intends to pursue a private action within 10 days of receipt of the director's determination, the party may not bring a private action.

Requires the director, if the complaining party elects to pursue a private action, to vacate any fines and penalties and immediately cease any administrative actions.

Allows the complaining party and the farm labor contractor to use the director's determination in a private action.

Bars a person who did not file a notice or complaint or who did not notify the director as to his or her intent to pursue a private action from bringing a private action.

Deletes the court's authority to award the prevailing party reasonable attorneys' fees.